

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

L.J., et al., *
Plaintiffs, *
v. * Civil Action No. JFM-84-4409
RUTH MASSINGA, et al., *
Defendants. *

* * * * *

NOTICE OF PROPOSED MODIFICATION OF CONSENT DECREE

TO: All children and youth who are in the custody of Baltimore City Department of Social Services (“BCDSS”) c/o their Child in Need of Assistance (“CINA”) attorneys who represent them in the Circuit Court for Baltimore City, Division for Juvenile Causes (“Baltimore City Juvenile Court”), and Mitchell Y. Mirviss, Esq. and Rhonda B. Lipkin, Esq.; Judges and Masters of the Baltimore City Juvenile Court; parents; foster parents; kinship caregivers; and others interested in the welfare of children in the custody of the Baltimore City Department of Social Services (“BCDSS”).

THIS NOTICE DOES NOT AFFECT ANY CHILD’S CASE IN THE JUVENILE COURT. THIS NOTICE DOES NOT PERTAIN TO ANY INDIVIDUAL CHILD IN NEED OF ASSISTANCE (“CINA”) CASE. THIS NOTICE HAS TO DO WITH A CASE IN FEDERAL COURT TO HELP ALL CHILDREN WHO ARE IN BCDSS CUSTODY.

I. INTRODUCTION

A Motion to approve a proposed Modified Consent Decree in the *L.J. v. Massinga* lawsuit has been filed in the United States District Court for the District of Maryland, Northern Division. The proposed Modified Consent Decree would replace and address the issues in the

current Consent Decree entered in 1988, its Modification entered in 1991, and an Order appointing a Monitor entered in 1989.

II. WHAT THIS LAWSUIT IS ABOUT

This class action lawsuit was filed in 1984 on behalf of children in the custody of BCDSS (“Plaintiffs”) against Defendants Maryland Department of Human Resources (“DHR”) and BCDSS. The lawsuit alleged that the State’s treatment of these children violated the law because the children were placed in unsafe living situations and not provided with the support and services to which they were entitled. The lawsuit was settled, and the Court entered a Consent Decree (an enforceable court order) approving the settlement and ordering various reforms of the foster care system in August 1988. In 1991, the Consent Decree was modified by agreement of the parties to extend the benefits of the Consent Decree to children in the custody of BCDSS who lived with relatives who were not licensed as foster parents (now referred to as kinship caregivers). From 1989 through February 2009, Defendants filed semi-annual compliance reports. In 2007, Plaintiffs filed a petition for contempt, enforcement and modification of the Consent Decree and an order appointing a monitor. From October 2008 through May 2009, with the help of two experienced mediators, Judith Meltzer and Kathleen Noonan, the parties negotiated a new Modified Consent Decree to replace the current Consent Decree.

III. SUMMARY OF THE PROPOSED MODIFIED CONSENT DECREE

The proposed Modified Consent Decree would replace the 1988 Consent Decree, the 1991 Modification, the 1989 Order Appointing a Monitor, and other related Orders. If the Court gives final approval of the proposed Modified Consent Decree, Plaintiffs will voluntarily dismiss their petition for contempt, enforcement, and modification of the Consent Decree.

This Notice includes a summary of the proposed Modified Consent Decree. The full proposed Modified Consent Decree, along with the Motion and Memorandum asking the Court to approve the Modified Consent Decree, are available on the websites for (i) the Department of Human Resources at www.dhr.state.md.us, (ii) the Baltimore City Department of Social Services at <http://www.dhr.state.md.us/baltocity.htm>, and (iii) the Public Justice Center at www.publicjustice.org. Additional information can be obtained from Rhonda Lipkin, attorney for Plaintiffs, at 410-625-9409 or at lipkinr@publicjustice.org or from the Office of the Attorney

General at DHR c/o Latonya Dulin, Legal Assistant at 410-767-7726 or at counsel@dhr.state.md.us. Part One of the proposed Modified Consent Decree includes sections on General Provisions, Verification Activities and Information Sharing, Communication and Problem-Solving Forum, Dispute Resolution, and Termination and Exit. There will be an Independent Verification Agent to make sure that BCDSS collects accurate information to show whether or not Defendants are meeting the requirements of the Modified Consent Decree. When Defendants have met all the Exit Standards for each of the Outcomes listed below, they can ask the Court to end the case.

The rights of the Plaintiffs are set out in Part Two and are divided into five sections, “Preservation and Permanency Planning,” “Out-of-Home Placements,” “Health Care,” “Education,” and “Workforce.” Each section of Part Two includes Statements of Principles, DHR/BCDSS Responsibilities, Outcomes with Definitions, Internal Success Measures and Exit Standards, and Additional Commitments required of Defendants. What follows are the specific Outcomes included in the modified Consent Decree.

Outcomes

Preservation and Permanency Planning

1. **Preserve Families:** Except in cases where safety requires the emergency removal and shelter care of a child, BCDSS shall provide each family of a child at risk of removal with assistance, or referral for services as appropriate, to address identified problems, and BCDSS shall provide or obtain and shall monitor such services in a duration and intensity reasonably calculated to enable the child to remain with the family without removal.

2. **Minimize Length of Stay:** BCDSS shall implement and achieve the child’s permanency plan quickly. BCDSS shall provide each child in OHP and each family of a child in OHP with assistance, or referral for services as appropriate, to address identified problems and needs, and BCDSS shall provide or obtain and shall monitor such services in a duration and intensity reasonably calculated to implement expeditiously and finalize the child’s permanency plan. This requirement shall continue until the Juvenile Court ends BCDSS’s obligations to the child.

3. Families Involved in Decision-Making: BCDSS shall utilize a planning and decision-making model in which BCDSS makes reasonable efforts to fully involve the family of origin, the extended family members, the child (as clinically appropriate), the child's attorney, and other individuals able to contribute to positive outcomes for the child at each critical decision-making point.

4. Each Child Has a Case Plan that Guides the Permanency Plan: Within sixty days of entering OHP, each child shall have a case plan that shall be updated and approved by an internal review team at least once every six months and which shall guide the permanency plan for the child.

5. BCDSS Will Provide Services Consistent with a Comprehensive Plan to Prepare Youth in OHP for Independence: Each child ages fourteen and over shall receive services, including independent living services, that are reasonably calculated to successfully transition the child to adulthood by age twenty-one.

Out-of-Home Placement

1. Each child shall be placed promptly in the least restrictive appropriate placement type for that child's needs.

2. No child under the age of thirteen shall be placed in congregate care unless it is medically or therapeutically necessary and the child is placed in a program that has services specifically designed to meet that child's needs.

3. DHR/BCDSS shall maintain a continuum of placements reasonably calculated to assure that each child is placed in the least restrictive placement for that child.

4. Each child in OHP and the child's caregiver shall be provided those services necessary and sufficient (1) to meet the child's immediate and long-term needs; (2) to support the stability of the child's placement and to support the caregiver's ability to meet the child's needs; (3) to avoid placement of the child in a more restrictive setting; and (4) to move the child, if appropriate given the child's needs, to a less restrictive setting.

5. Each kinship care provider shall be informed promptly of his or her right to apply to become a licensed foster parent, and each application for licensure shall be timely processed with retroactive benefits provided to the date of application. Each kinship care provider will be

given an application and afforded the opportunity to file an application on the date the child is placed in the home. An application will be deemed to have been made when the caregiver indicates in writing his or her desire to become a licensed foster parent. Each kinship care provider shall be afforded the same opportunities for training and other services as licensed foster parents.

6. BCDSS shall employ a staff of specialists to provide technical assistance to caseworkers and supervisors for cases that require specialized experience and/or knowledge.

7. Each child's placement shall meet all safety, health, sanitation, licensing and other legal requirements for that placement. Each placement provider shall receive all training required by law.

8. For each child, DHR/BCDSS shall provide the caregiver with all available information about the child's status, background, and needs.

9. Each child shall be protected from maltreatment in the child's placement to the maximum extent possible.

10. No child may be housed in an office, motel, hotel, or other unlicensed facility.

11. Each child shall be given the opportunity to be informed about and, as clinically appropriate, to participate actively in placement decisions being made for the child.

12. Each child in OHP shall be visited by the child's assigned caseworker or designated substitute at least once every month in the child's placement.

Health Care

1. Each child in OHP must receive an initial health screen prior to placement, but, in any event, not later than five working days following placement in OHP.

2. Each child in OHP must receive a comprehensive health assessment within sixty days of entry into OHP.

3. Each child in OHP must receive timely periodic EPSDT examinations, and all other appropriate preventive health assessments and examinations, including examinations and care targeted for adolescents and teen parents.

4. Each child in OHP must receive timely all health services that the child needs, consistent with either of the COMAR regulations addressing OHP medical care in effect as of December 9, 2008 (07.02.11.28(M) and (N)).

5. Each child in OHP must have a completed health passport and a medical assistance card, which are provided promptly to each child's caregiver.

Education

1. Each child in OHP shall be enrolled in and begin attending the child's home school or a new school immediately after entry into OHP and after any change of placement.

2. Each child's case plan shall include an educational plan for ensuring the child's educational stability and progress while in foster care and BCDSS shall monitor the child's educational progress.

3. Each child in OHP shall receive all necessary special education services.

Workforce

1. Appropriate Caseload Ratios: Permanency (foster and kinship care, including adoption) workers' caseload of fifteen children (or any lower ratio required by Maryland state law); Family Resource and Support ("R&S") workers' caseload of forty families (or any lower ratio required by Maryland state law); and supervisors' caseload of six caseworkers (or any lower ratio required by Maryland state law).

2. Qualified Workforce with appropriate training and supervision.

3. Case Transfer Policies: Case re-assignment in five working days. Case re-assignment conference in ten working days.

Additional Commitments

Some of the Additional Commitments include provisions for addressing funding for prevention of foster care placement and reunification; for placement of foster children in the least restrictive placement appropriate for their needs; for regular increases in foster parent and Semi-Independent Living ("SILA") rates; for child care; for emergency shelter homes; for a kinship caregiver support center; and for full implementation of the BCDSS Health Care Initiative.

IV. OPINION OF THE LAWYERS FOR THE CLASS

Class members are represented by Mitchell Y. Mirviss and Venable LLP and Rhonda B. Lipkin and the Public Justice Center. Class counsel believe that the agreement is a fair settlement that fully protects the interests of the class and is in the best interest of Plaintiffs.

V. DAMAGES

There is no monetary award for members of the class, and members may not file a claim for damages.

VI. FAIRNESS HEARING AND OPPORTUNITY TO COMMENT

A hearing on the fairness of the proposed Modified Consent Decree will be held on August 5, 2009 at 9:00 a.m. before Judge J. Frederick Motz, United States District Court for Maryland (Northern Division), 101 West Lombard Street, Baltimore MD 21201. You have the right to make written objections to the terms of the proposed Modified Consent Decree, and/or to write a statement in support of the proposed Modified Consent Decree. If you wish to comment on the proposed Modified Consent Decree, you can submit the attached Objection form. If you object to the proposed Modified Consent Decree, you should explain your reasons for objecting.

Written comments or objections should be submitted no later than July 27, 2009 to: Plaintiffs' attorney Rhonda Lipkin, Public Justice Center, Inc., One North Charles Street, Suite 200, Baltimore MD 21201 or by fax to 410-625-9423 or by email to lipkinr@publicjustice.org or to Department of Human Resources, 311 West Saratoga Street, Suite 1015, Baltimore MD 21201 or by fax to 410-333-0026 or by email to counsel@dhr.state.md.us.

If you wish to appear to testify at the fairness hearing, you should make that request in writing at the time you submit your written comments. **YOU DO NOT NEED TO APPEAR IN PERSON AT THE HEARING TO HAVE YOUR WRITTEN COMMENTS CONSIDERED BY THE COURT.** The attorneys will provide to the Court any written comments received in response to this notice.